

COUNCIL AGENDA: 4/29/08
ITEM: 9.1(c)

Memorandum

TO: HONORABLE MAYOR, CITY
COUNCIL AND REDEVELOPMENT
AGENCY BOARD

FROM: Debra Figone
Harry S. Mavrogenes

SUBJECT: SEE BELOW

DATE: April 11, 2008

Council District: 3

**SUBJECT: DOWNTOWN STREET VENDORS: PERMIT PROCESS
IMPROVEMENTS, ORDINANCE CHANGES, NEW REGULATIONS**

RECOMMENDATION

City Council and Redevelopment Agency Board actions related to downtown street vendors:

- (a) City Council direct staff to develop ordinances:
 - (1) Repealing the Flower Vendor Ordinance set forth in Chapter 6.30 of Title 6 of the San Jose Municipal Code;
 - (2) Amending the Peddler Permit Ordinance, Chapter 6.54 of Title 6 of the San Jose Municipal Code, to: include regulation of flower street vendors; extend the hours during which approved location peddlers can peddle; authorize the City Manager to make and promulgate time, place and manner regulations reasonably necessary to promote economic growth and create a more vibrant Downtown, and update definitions in the Chapter 6.54 to ensure consistency of terms within Title 6 of the San Jose Municipal Code; and
 - (3) Amending the Downtown Special Events Ordinance, Chapter 6.55 of Title 6 of the San Jose Municipal Code to reduce the area within which approved location peddler's permits may be suspended during a designated Downtown Special Event by limiting the suspension area to the Special Event Boundary; authorize peddlers within the Special Event Boundary to peddle at alternative, temporary locations outside the Boundary for the duration of the Downtown Special Event; and clarify the exceptions to the requirement for Event Organizers to provide approved location peddlers an equal opportunity to participate in the Downtown Special Event.
- (b) City Council and Redevelopment Agency Board accept staff's recommended process to assist peddlers wishing to operate as approved location peddlers in the Downtown Vendor Program Area.

OUTCOME

Directing staff to develop the above ordinances would result in regulations that encourage and support an increase in the number and the variety of approved location peddlers Downtown, and create a richer customer experience and a livelier pedestrian experience in the public realm, consistent with the San Jose-1stACT vision. Acceptance of staff's recommended process for assisting approved location peddlers will result in a more supportive experience for those seeking to operate as approved location peddlers in the Downtown Vendor Program Area (see Attachment A for map).

BACKGROUND

"Approved location peddlers" are those peddlers who operate and peddle from a peddler cart and from the same approved location in the City every day or during certain days or times of the week. While they remove their carts at the end of the day, they are not considered mobile peddlers and are subject to different regulations than those peddlers that are mobile or move from location to location to sell their wares.

On October 2, 2007, Council approved the "Small Wonders Workplan". The purpose of this plan was to accelerate progress towards achieving a thriving Downtown San Jose that can serve as "Silicon Valley's City Center"—a vision that is advanced by 1stACT Silicon Valley, embraced by the City Council, and is consistent with Downtown Strategy 2000. "Small Wonders" are those smaller-scale amenities that create a distinctive and lively street life, fill in between the "Big Deal" building projects and keep people returning to a downtown because it is a special place. To this end, the Small Wonders Workplan includes more than 20 projects aimed at filling in the gaps in Downtown. Project #8 on that list of projects is "the encouragement of street vendors, kiosks, and outdoor markets Downtown."

Following Council's approval of the Small Wonders Workplan, a group was formed to evaluate the City's current Peddler Ordinance and determine what improvements could be made to the ordinance that would address project #8 in the Workplan. That group consisted of staff from the Office of Economic Development/Cultural Affairs, the San Jose Redevelopment Agency (SJRA), the Department of Planning, Building and Code Enforcement (Planning), and the Police Department. The Departments of Transportation, Public Works, Environmental Services and Fire were also consulted and provided input.

After reviewing the Peddler Ordinance, the team found that the current approach to peddlers (hereafter, "street vendors"), especially approved location street vendors, within Downtown was created in the 1970s. The goal of the group was to update the City's approach to approved location street vendors, particularly within the Downtown area, so that it aligned with Downtown's present situation and future vision, without sacrificing public safety. The group also considered the experience of other cities with more highly developed street vendor programs and suggested changes to the ordinance based on the success of those programs.

Changes being considered for approved location street vendors in the Downtown Vendor Program Area are as follows:

1. Encourage street vendor activity by streamlining the permit process and by improving the street vendor's initial interaction and experience with the City.
2. Expand hours that street vendors can operate to align with retail hours in the Downtown.
3. Promulgate regulations aimed at supporting street vendor business and encouraging economic development.
4. Repeal the Flower Vendor Ordinance so that street vendors selling flowers are not subject to different regulations.

Taken together, the revisions will help achieve the following goals:

1. A more lively pedestrian experience Downtown, where unique street vendors add to Downtown's distinctiveness.
2. An approval process for new street vendors that is clearer, streamlined, and friendlier.
3. An increase in the number and diversity of street vendors Downtown, including street vendors selling retail products as well as food/beverage (currently there are only three hotdog street vendors in this area).

While reviewing the Peddler Ordinance with an eye toward economic development in the Downtown, staff also noted a need for change to other provisions of Title 6 that regulate approved location street vendors and mobile street vendors citywide. One of the issues needing to be addressed was the presence of an entirely different Chapter within Title 6 of the Code that was in place to regulate approved location street vendors that were selling flowers. Instead of having several different processes for flower vendors, staff thought it more efficient to repeal the Chapter pertaining to the Flower Vendor Ordinance so that flower vendors would not be subject to regulations that were different than those regulations for other types of peddlers; which, in turn would result in less confusion with street vendors. Other changes staff felt were necessary were updates to the definitions within the Peddler Ordinance to ensure consistency with terms used throughout Title 6 of the Code.

ANALYSIS

Revised Permit Approval Process Proposed For Approved Location Street Vendors In the Downtown Vendor Program Area:

Staff will create an improved permit approval process that will be clearer and easier for the street vendor to maneuver. The primary change is to expand the role of the Redevelopment Agency's Project Expeditor (Expeditor) position, which assists all retailers and projects in navigating the City's Planning and Building processes, by having the Expeditor serve as liaison between City departments and the person applying for an approved location street vendor permit in the

Downtown Street Vendors

Page 4

Downtown Vendor Program Area. This position has been successful in assisting restaurants and sidewalk cafes during this past year. The recommendation is to include liaison services to potential approved location street vendors and City departments as part of the regular work plan of this position.

Currently, the main City contact for potential approved location street vendors is the Police Department and a Police Officer in the Permits Unit. To improve the application experience for the applicant and ensure that the applicant receives assistance that will provide a more successful retail experience Downtown, the Expeditor will function as the primary contact for the applicant. The Expeditor will facilitate the client's application process, guide location selection and forward the completed application to the Police Department for approval, subject to a criminal background check and a site inspection for public safety. Authority to issue the permit will remain with Police Department, who will continue their role in conducting the background check, inspecting the site for public safety and ultimately issuing the street vendor permit and a photo identification badge.

The Expeditor will also improve the presentation and accessibility of information about the business possibilities for approved location street vendors Downtown and about the permitting process. Program information and downloadable application forms will be available on the Redevelopment Agency and City websites. The Expeditor will also create an easy-to-understand Program Handout that summarizes key requirements in the updated ordinance and any regulations promulgated by the City Manager. City Hall Business Services Center staff will also provide packets of information to any applicants seeking information at City Hall.

Permit fees for approved location street vendors wishing to operate in these areas will be paid at the City Hall Cashier and the fee revenue will then be appropriated to the Police Department. See Attachment B, Improved Permit Approval Process, for a flowchart of the improved process.

**Main Revisions Being Proposed to the Permit Approval Process
Approved Location Permits for Street Vendors Participating In the Downtown Vendor
Program Area**

	Current Permit Process	Proposed Permit Process
Main Vendor Contact	Police Officer in Permits Unit	Use of Project Expeditor position to assist in this program
Initial Interaction with Vendor	At Police Department	At City Hall
Vendor Locations	Vendor proposes locations until one is acceptable	Expeditor works closely with vendor to choose a location; secondary location is also selected if relocation could be necessary during Downtown Special Events
Approval Recommendation	Police Department	Project Expeditor to Police Department

Permit Issuer/Background Check	Police Department	Police Department
Availability of Program Information	Hard copy from Police Department	On-line (SJRA/City, Police Department websites) Pick up hard copy at City Hall Business Services Center
Locations Applicant Needs to Visit	Police Department (3 times) City Hall to pay business tax Sheriff (for fingerprinting) Health Department if selling food items	City Hall (one time to pay permit fees/business tax, complete permit application with Project Expeditor and review potential locations) Police Department (twice: once for interview and again to pay for and pick up photo I.D. and pick up permit, if approved) Sheriff (for fingerprinting) Health Department if selling food items
Permit Fees Paid	At Police Department	At City Hall Cashier

Proposed Revisions to Ordinances and New Regulations Regarding Approved Location Street Vendors in the Downtown:

In the recommended approach, the Ordinances will be revised to include the basic, broad parameters of the Downtown Vendor Program, and new Regulations will be created that specify the implementation details. Council will need to eventually adopt any proposed ordinances, but the City Manager will be able to change the regulations by administrative action and after providing a period of time for comment from stakeholders. This approach is recommended to provide flexibility to change implementation details as necessary based on on-the-ground experience with the program, to promote economic growth and create a more vibrant Downtown consistent with the City's Downtown Strategy 2000 and the City's General Plan.

The following table summarizes the main changes that would be proposed to the Peddler Ordinance and the Downtown Special Events Ordinance and main provisions of the Regulations.

**Main Changes Proposed to the Ordinances and Proposed Regulations
Approved Location Permits for Street Vendors in the Downtown Program Area**

	Current Ordinance	Proposed Ordinance/Regulations
Policy Structure	Program governed by citywide fixed-location peddler Ordinance	Ordinance outlines broad elements of Downtown fixed-location vendor program; new regulations outline specific requirements
Vendor hours	10:00 a.m. to 7:00 pm or 30 minutes after sunset	Conform to retail hours: 6:00 a.m.-midnight Downtown
Vendor locations	Sidewalk portion of public streets	Expands allowable locations to include certain plazas and paseos in addition to sidewalks-- subject to safety, ADA compliance and pedestrian flow requirements
Size/Design	Specifies maximum cart size	Provides flexibility by specifying overall footprint (100 sf); retains maximum cart height (10');
Minimum Days of Operation	None specified	Required to vend for not less than 15 hours per week, and not less than 3 days per week
Flower Vendors	Permitting authority lies with Finance Department	Police Department has permitting authority for flower vendors citywide; flower vendors included in Downtown Vendor Program
During Special Events	Allows suspension of approved location peddler permits within extensive "Special Event Zones" during designated outdoor special events.	The boundary for a declared Downtown Special Event is the more narrowly defined and event-specific Special Event Boundary, eliminating the need to use "zones". Allows suspension of approved-location peddler permits within the Special Event Boundary only. Displaced vendors may relocate during the Downtown Special Event to a location outside the Special Event Boundary. The alternative location will be identified as part of the permit.

Treatment of Approved Location Street Vendors During Downtown Special Events:

The most significant change being proposed regarding Downtown Special Events is shrinking the "Special Event Zone" designation down to a "Special Event Boundary" designation, so that fewer approved location street vendors will be affected. The second most important change proposed is the ability to relocate approved location street vendors outside of a designated Downtown Special Event.

Currently, an Event Organizer can request to designate their event as a "Downtown Special Event." The designation of the boundaries for a Downtown Special Event is based on four distinctive, large zones. The Event Organizer must offer street vendors with valid approved locations within the designated Special Event Zones the same opportunity to participate in a declared Downtown Special Event as the Event Organizer offers to its own vendors. If a street vendor with an approved location within the designated Special Event Zone(s) chooses not to participate in the declared Downtown Special Event on the same terms as other event vendors or is not selected to participate, the Event Organizer can require the street vendor to close down operations during the event. The practical effect of this policy is that street vendors located in the designated Special Event Zones in areas that are near, but not part of the Downtown Special Event, may be shut down for extended periods of time, especially during the summer festival season. This can significantly impact the street vendor's chance of success over the course of the year.

Staff recommends revisions to the Downtown Special Events Ordinance to eliminate Special Event Zones and instead utilize a "Special Event Boundary" (geographically narrower than "Special Event Zone" and drawn on a more event-specific basis) to define the impacted area. The revised Ordinance would provide that the event organizer must offer the approved location street vendors within the Special Event Boundary the same opportunity as other vendors to vend within the event, paying the same charges as other temporary vendors serving the event. An impacted approved location street vendor that chose not to participate in the event or is not selected by the Event Organizer to participate in the declared Downtown Special Event would be given the opportunity to relocate to an alternate, secondary approved location outside the Special Event Boundary. Similarly, in the special cases where an entire "Special Event Boundary" area is required for event equipment or where an event is for a private function or the event does not have any vendor components, street vendors with approved location permits in the Special Event Boundary will be offered an alternate, secondary location for the special event period. Street vendors whose approved locations are outside of the Special Event Boundary would be able to remain in operation and sell their goods to event attendees walking to the event site.

In the special cases where an entire "Special Event Boundary" area is required for event equipment or where an event is for a private function or the event does not have any vendor components, approved location street vendors will be offered an alternative location for the special event period.

Vendors on City Hall Plaza:

Staff is not proposing any changes to the existing requirement in the City Hall Plaza Ordinance that street vendor opportunities at City Hall Plaza be managed outside of the Peddler Permit Ordinance through concession agreements with the City. The main reasons Council originally adopted the current policy regarding vendors in the City Hall Plaza have not changed: impacts to the use and rentability of the Plaza and Rotunda, facility maintenance impacts, aesthetic fit, healthy food choice requirements in City facilities and site security.

EVALUATION AND FOLLOW-UP

Staff will return to the City Council with ordinances aimed at making the above recommended changes to the current Peddler Ordinance and the current Downtown Special Events Ordinance. If these changes are approved by the City Council, staff would report implementation progress on the Downtown Street Vendor program as part of twice-yearly reports about the Small Wonders Work Plan to the Community and Economic Development Committee. Staff would further conduct a specific assessment after one year of the impact on the Downtown Special Events as well as the approved location street vendors that result from any approved changes to the current Ordinances regarding the treatment of approved location street vendors during special events. Staff would further recommend a review of the program after one year, including consideration of organization options for managing and monitoring the program if it is successful and grows.

PUBLIC OUTREACH/INTEREST

The proposed action does not meet any of the criteria for added outreach efforts. This staff report will be posted on the City's website and made available for public review in the City Clerk's Office.

- ☐ **Criterion 1:** Requires Council action on the use of public funds equal to \$1 million or greater.
- ☐ **Criterion 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City.
- ☐ **Criterion 3:** Consideration of proposed changes to service delivery, programs, or staffing that may have impacts to community services and have been identified by staff, the Board or Council, or a community group that requires special outreach.

Staff interacted with several of the main Special Events producers who currently request suspension of approved location street vendor permits during Downtown Special Events, regarding the changed treatment of approved location street vendors during special events. This included notification and consultation by email, as well as discussion after the Community and Economic Development Committee meeting. Staff has also interacted with the existing Downtown street vendors to understand their concerns.

Staff has worked with the San Jose Downtown Association (SJDA) to develop the following outreach strategy:

1. A summary of Downtown Street Vendor Program changes and improvements will be included in the SJDA newsletter with regular reminders following (similar to other programs like the Facade Improvement, Sidewalk Cafe and Sign Grant programs.)
2. Information about the program will be posted on the SJDA website and available through the SJDA's front desk and outreach staff.

4-11-08

Downtown Street Vendors

Page 9

3. SJDA will send information about the Downtown Street Vendor Program via email to each neighborhood committee (SoFA, San Pedro and Historic Districts plus other smaller business districts – Paseo de San Antonio, San Carlos Street and River Street) and announce it verbally at the next round of neighborhood committee meetings.

POLICY ALIGNMENT

This action furthers the implementation of the Downtown 2000 Plan and the Economic Development Strategy (Initiative #4: Evolve and Position Downtown as a Unique Creative and Cultural Center of Silicon Valley.)

COORDINATION

This memo has been coordinated with the Office of Economic Development, Office of Cultural Affairs, Police Department, Finance, the City Attorney's Office and the Agency's General Counsel.

CEQA

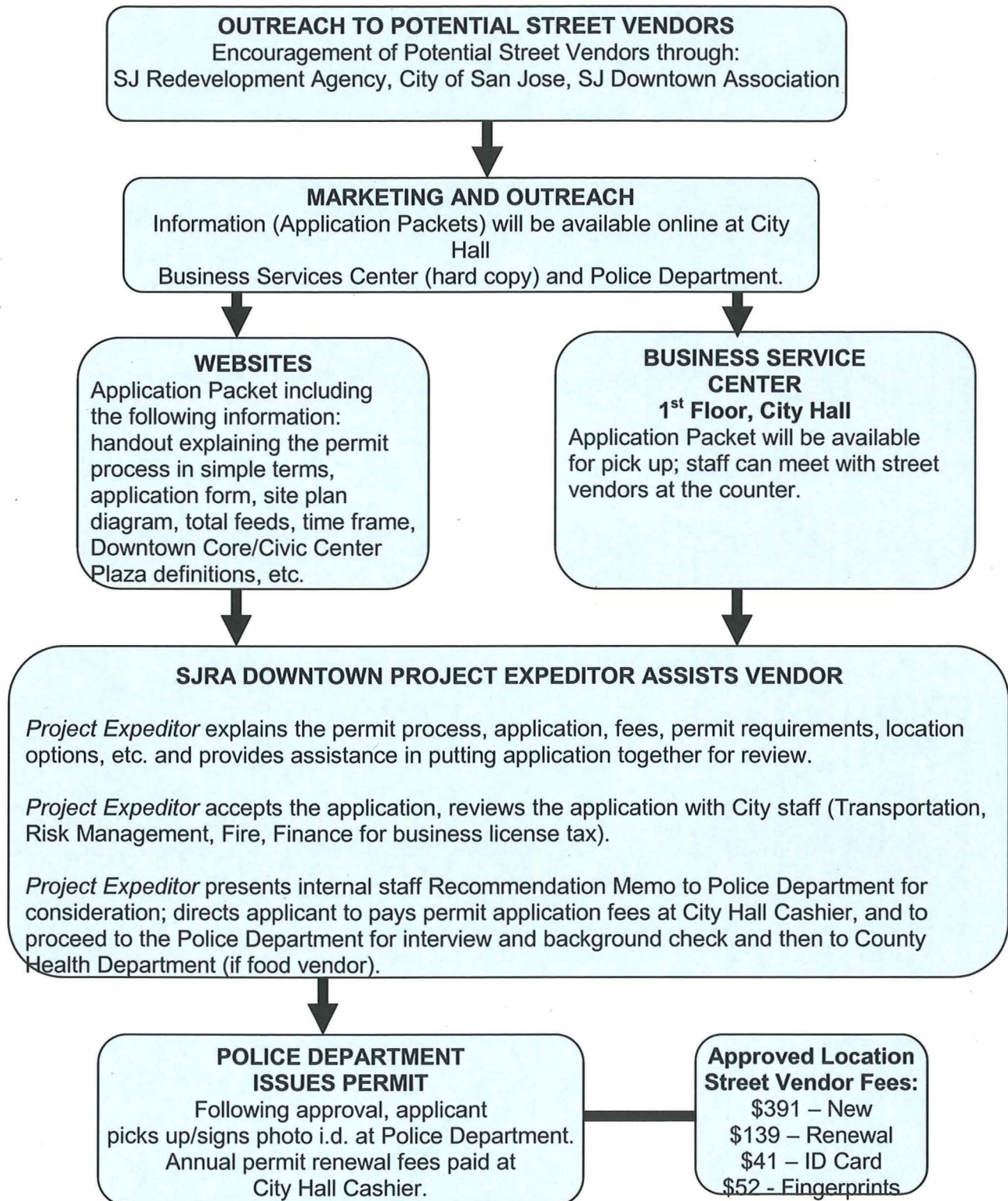
Not a project.



DEBRA FIGONE
City Manager

HARRY S. MAVROGENES
Executive Director

Downtown Vendor Program
Approved Location Street Vendor Permits
Streamlining the Permitting Process



Attachment A

